No. 00-360

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

CYPRUS AMAX COAL COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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TABLE OF AUTHORITIES

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1. a. Respondents make no effort to explain or justify the erroneous holding of the court of appeals that a taxpayer may commence an action to recover an unconstitutional tax without filing a timely claim for refund. Section 7422(a) of the Internal Revenue Code specifies that "[n]o suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected * * * until a claim for refund or credit has

been duly filed with the Secretary." 26 U.S.C. 7422(a).[1] And, Section 6511(a) requires claims for refund "of any tax imposed by this title" to be filed within three years of the date of the taxpayer's return or within two years of the date "the tax was paid, whichever of such periods expires the later." 26 U.S.C. 6511(a). It is undisputed that respondents failed to conform to these statutory prerequisites to "the recovery of any internal revenue tax." 26 U.S.C. 7422(a). The plain text of these statutory provisions thus bars any suit for the recovery of the internal revenue taxes sought in this case. See Pet. 14-15; note 1, *supra*.

In addition to ignoring the governing text of these statutory provisions, the decision of the court of appeals neglects to consider the controlling decisions of this Court. This Court has made clear that these statutory restrictions on suits to recover taxes paid to the United States effect a waiver of the government's sovereign immunity from suit, and that the authority of courts to maintain such a suit is therefore "conditioned on the filing of a claim" in strict compliance with these statutes. *United States* v. *Michel*, 282 U.S. 656, 658 (1931). Indeed, as recently as *Commissioner* v. *Lundy*, 516 U.S. 235 (1996), this Court emphasized that the statutory requirements "governing refund suits in United States District Court or the United States Court of Federal Claims * * * make timely filing of a refund claim a jurisdictional prerequisite to bringing suit, see 26 U.S.C. § 7422(a)." 516 U.S. at 240. See also Pet. 15-18 & n.12. Neither respondents nor the court of appeals

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[1] Respondents conceded at oral argument in the court of appeals that the tax involved in this case is "an internal revenue tax." Tr. of Arg. at 7 (Feb. 10, 2000). See also Pet. 19.

offer any basis for disregarding either the controlling statutory text or the decisions of this Court.

b. Instead of addressing the serious analytical deficiencies in the holding of the court of appeals, respondents simply assert (Br. in Opp. 6) that the decision in this case will have little impact because it will apply only when the tax is allegedly imposed in violation of "money-mandating constitutional provisions."[2] Respondents suggest (*ibid.*) that—under Federal Circuit precedent issued to this point in time—the "money-mandating" provisions of the Constitution include only the Export Clause, the Takings Clause and the Compensation Clause.

We do not agree with the central premise of respondents' assertion—that there is little of importance in a refusal by the Federal Circuit to abide by statutory restrictions on claims against the United States. The responsibility of that circuit to honor these statutory restrictions, and to apply the decisions of this Court interpreting those statutes, is a matter of the highest importance to the United States. Essentially *all* claims against the United States may be brought in that circuit; and many such claims may be brought *only* in that circuit. If the laws that Congress has provided for

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[2] Respondents seek to convey the impression that the United States ignored this aspect of the court's decision. In fact, the petition expressly states that, "[u]nder the decision in this case, the statutory prerequisites to a tax refund suit are irrelevant if the tax has assertedly been imposed in violation of the Export Clause or any other constitutional provision that can be interpreted as supporting a claim for monetary relief." Pet. 23. While respondent asserts that the decision below applies only to "money-mandating constitutional provisions," there is nothing in the opinion itself to suggest that "money-mandating statutory provisions" are not also encompassed within the court's reasoning.

the recovery upon claims against the United States, and the decisions of this Court interpreting those statutes, are not properly applied in the Federal Circuit, those statutes and decisions will simply be rendered ineffective.

In particular, the suggestion of the court of appeals that the general provisions of the Tucker Act somehow provide that court with jurisdiction to override statutory restrictions on suits to recover taxes (Pet. App. 6a-7a) is an extraordinarily broad (and incorrect) proposition. See Pet. 23-24. The statute of limitations on tax claims is "one of th[e] terms" that limits the consent of the United States to suit "in any court." *United States* v. *Dalm*, 494 U.S. 596, 608 (1990). That statute applies and governs in the Court of Federal Claims and in the Federal Circuit just as it does "in any [other] court."

2. a. In the petition, we explain that Section 6511(a) of the Internal Revenue Code imposes a three-year statute of limitations on claims for the recovery of taxes from the United States and that Section 7422(a) specifies that failure to comply with that time limit prohibits "any court" from maintaining a suit "for the recovery of any internal revenue tax." 26 U.S.C. 7422(a). See Pet. 18-22. We also point out that this Court held in *United States* v. *A.S. Kreider Co.*, 313 U.S. 443 (1941), that the specific statute of limitations that governs tax claims applies even when (as here) tax refund claims are brought under the Tucker Act in the Court of Federal Claims. In *Kreider*, this Court expressly held that the general six-year statute of limitations for claims brought in the Court of Federal Claims (28 U.S.C. 2401(a), 2501)) is inapplicable when, as here, Congress has provided a "different and shorter period of limitation [for this] individual class of actions." 313 U.S. at 447.

Respondents make no effort to deny the obvious importance of the contrary holding of the court of appeals in this case. The conclusion of the Federal Circuit that the three-year statute of limitations on tax claims is inapplicable for a suit brought under the Tucker Act is extraordinary not only because this Court held precisely to the contrary in *Kreider* but also because, as we explain in the petition (Pet. 17 n.12), *every* tax refund suit brought in the Court of Federal Claims is brought under the Tucker Act. The decision in this case is thus not only manifestly incorrect. It has an extremely broad and recurring importance.

b. Respondents underscore the recurring importance of this statute of limitations issue by making the surprising contention that the *Kreider* case is no longer valid authority. Respondents assert that the statute of limitations on tax claims involved in *Kreider* differs from the statute of limitations contained in Section 6511(a) of the Internal Revenue Code, which respondents characterize as concerning only when "an administrative claim" may be brought, rather than "the period for bringing a *lawsuit*" (Br. in Opp. 10, 11). In making that argument, however, respondents simply ignore Section 7422(a) of the Code, which provides that, when a claim for refund is *not* "duly filed" in compliance with the requirements of Section 6511(a), "*[n]o suit or proceeding shall be maintained in any court* for the recovery of [the] tax." 26 U.S.C. 7422(a) (emphasis added). Respondents' effort to distinguish the statute of limitations involved in *Kreider* from the statute involved in the present case is thus plainly unavailing.

Moreover, the proposition that respondents seek to advance would require a bizarre and illogical conclusion. On respondents' theory, tax refund claims, which are unquestionably subject to a three-year statute of

limitations in the district courts, would instead obtain a *six*-year statute of limitations simply by being filed in the Court of Federal Claims. This Court concluded sixty years ago in the *Kreider* case that Congress has not provided for that manifestly incongruous result.

c. Finally, respondents assert (Br. in Opp. 10) that the failure of the court of appeals to honor the three-year statute of limitations on tax claims does not warrant review by this Court because the court's error was first pointed out to it by the government in a petition for rehearing following entry of the panel's decision. In fact, however, the government argued in a brief filed four months before argument to the panel that only "tax payment[s] * * * made within the 3-year statute of limitation applicable to tax-refund suits" may be recovered by respondents. U.S. Supp. Brief at 6 (filed Sept. 7, 1999). Moreover, respondents have acknowledged that the theory adopted by the court of appeals in this case—that the general six-year statute of limitations for actions in the Court of Federal Claims can apply even to a tax refund claim brought in that court—was not raised by either of the parties. Instead, this theory was devised by the court itself in "[a]ddressing an issue that [the court] raised *sua sponte* at oral argument." Br. in Opp. 2. The government can hardly be faulted for not anticipating in its briefing to the panel that the court would adopt a line of reasoning that had not been urged by either party and that directly conflicts with this Court's decision in the *Kreider* case.

Moreover, following entry of the panel decision, the government promptly informed the court of appeals of the inconsistency between the decision in this case and the *Kreider* decision and requested rehearing en banc to address that conflict. The court of appeals denied the

petition for rehearing even though the court was fully informed of the manner in which the panel's decision has departed from *Kreider* and of the substantial, recurring importance of that statute of limitations issue. Review by this Court is warranted (i) to ensure enforcement in the Federal Circuit of the carefully articulated statutes of limitation that Congress has provided for actions to recover internal revenue taxes from the United States and (ii) to require the Federal Circuit to conform to the controlling decisions of this Court that have addressed these very issues.

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For the reasons stated above and in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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Solicitor General

NOVEMBER 2000